

No. 14756

United States
Court of Appeals
for the Ninth Circuit.

MARLIN FERRIS GOGGANS, Also Known as M.
F. GOGGANS,

Appellant,

vs.

RETA OSBORN,

Appellee.

Transcript of Record

Appeal from the District Court
for the District of Alaska,
Third Division

FILED

AUG - 8 1955

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

EDWARD V. DAVIS,

DAVIS, RENFREW AND HUGHES,

Box 477, Anchorage, Alaska,

Attorneys for Appellee.

GEORGE B. GRIGSBY,

Central Bldg., Anchorage, Alaska,

Attorney for Appellant.

IV.

That during the marriage of the parties hereto they have acquired certain real and personal property, including the home of the parties hereto situated at 1547 H Street, Anchorage, Alaska, a painting contracting business and retail and wholesale paint and wallpaper business known as the M. F. Goggans Co., which said businesses are owned solely by the parties hereto as co-partners, automobiles, trucks, equipment, furniture and fixtures used in connection with said businesses, and cash in banks.

V.

That there is an incompatibility of temperament existing between the plaintiff and defendant, in the following particulars, to wit: that the likes and dislikes of the parties are greatly divergent, so that there has been a great deal of arguing and bickering between the plaintiff and defendant about all manner of things; that the plaintiff and defendant have no common interests or desires; and that defendant has been critical and fault-finding toward plaintiff. That such incompatibility of temperament has existed for some time prior hereto, and as a result thereof plaintiff and defendant separated on a date prior hereto, and have not since lived or cohabited together as wife and husband. That, as plaintiff believes and so alleges the fact to be, it will never be possible for plaintiff and defendant to live together amicably as wife and husband, and there is no possibility of a reconciliation between them. That

plaintiff has at all times since said marriage endeavored to resolve the differences between the parties and is without fault in the matter.

VI.

That the property belonging to the parties hereto has been accumulated through their joint efforts from the date of their marriage to the 5th day of January, 1951, and that the plaintiff is entitled to an equitable division of said property. That the plaintiff is further entitled to the sum of \$100.00 per week for her living expenses from the business belonging to the parties hereto, which said sum has been agreed upon by the parties hereto.

Wherefore, plaintiff prays for judgment as follows:

1. That the bonds of matrimony heretofore and now existing between the plaintiff and defendant may be set aside and held for naught.

2. That plaintiff be awarded, as her sole and separate property, an equitable share of the property owned by the parties hereto, and that defendant be ordered to pay to plaintiff herein, from the funds of the businesses owned by the parties, the sum of \$100.00 per week as and for her support and maintenance during the pendency of this action.

3. That the plaintiff be restored to her maiden name, to wit: Reta Osborn.

4. For such other and further relief as may be meet and equitable in the premises.

DAVIS & RENFREW,
Attorneys for Plaintiff.

By /s/ EDWARD V. DAVIS.

Duly verified.

[Endorsed]: Filed August 7, 1951.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and agreed between Davis & Renfrew, attorneys for the plaintiff, and George B. Grigsby, attorney for the defendant, as follows:

Whereas, under date of August 7, 1951, the above-entitled Court entered an order to show cause and temporary restraining order in the above-captioned matter, which order to show cause was set to be heard on the 10th day of August, 1951, at the hour of 4 o'clock p.m. and

Whereas, the attorneys above named, representing the respective parties hereto, have agreed as to the matters requested for decision of the Court by virtue of said order to show cause.

Now Therefore, it is stipulated as follows:

1. That the plaintiff shall receive from the defendant out of the assets of the partnership business known as the M. F. Goggans Co. the sum of \$100.00 per week as a drawing until such time as a final settlement or adjudication of the above-cap-

tioned cause is had between the parties, said sum to be paid by check or cash to the plaintiff at the office of Davis & Renfrew or mailed to the plaintiff in care of said firm at Box 477, Anchorage, Alaska.

2. That the defendant M. F. Goggans shall be entitled to receive and draw out of the assets of the M. F. Goggans Co. the sum of \$150.00 per week pending the final settlement or adjudication of the above-captioned cause.

3. That the defendant shall be restrained and enjoined by order of Court from accosting, annoying or molesting the plaintiff in this action in any manner whatsoever, or from interfering with the plaintiff in her possession of the family home at 1547 H Street, Anchorage, Alaska, pending the final adjudication of the above-captioned cause by the parties.

4. That the defendant shall be restrained and enjoined, during the pendency of this action, from disposing of any of the assets of the M. F. Goggans Co. or from dissipating the cash or bank accounts of the said company other than such sales or expenditures of the cash assets of the said company normal or customary in the usual course of trade thereof.

5. That each of the parties hereto shall, during the pendency of this action, deliver each to the other any mail or personal property now in their possession or hereafter to come into their possession and that each of the parties hereto specifically agrees that they will refrain from writing checks on the

bank accounts of the M. F. Goggans Co. or otherwise disposing of the assets of the said company except as is hereinabove provided.

6. That an order of this Court shall be entered in accordance with the above and foregoing provisions.

/s/ RETA OSBORN GOGGANS.

DAVIS & RENFREW,

By /s/ JOHN C. HUGHES,

/s/ M. F. GOGGANS,

Attorneys for Plaintiff.

GEORGE B. GRIGSBY,

By /s/ GEORGE B. GRIGSBY,

Attorney for Defendant.

[Endorsed]: Filed August 10, 1951.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant in the above-entitled action and answering the complaint of plaintiff filed herein, admits, denies and alleges as follows:

I.

Admits the allegations set forth in paragraphs I, II, and III of plaintiff's complaint and the whole thereof.

II.

Answering paragraph IV of said complaint de-

defendant admits the allegations thereof except as hereinafter specifically denied, and in that behalf defendant alleges that at the time of the marriage of plaintiff and defendant the defendant was the owner of a painting and contracting business and wholesale paint and wallpaper business, and had owned and operated the same for several years prior to said marriage, and from which defendant had earned a substantial annual income; that on January 1st, 1947, which was four days after said marriage was consummated, said business had tangible physical assets, consisting of a bank balance of \$8018.14, merchandise on hand of the value of \$14,086.40, and equipment of the value of \$14,321.21, in all aggregating the amount of \$36,425.95; that on said date said business was a going concern, had profitable contracts in force, had no liabilities, and the good will thereof was worth many thousands of dollars; that from and after Jan. 1st, 1947, defendant became a partner with plaintiff in said business and in May and June, 1947, the plaintiff invested in said business the sum of \$7500.00; that the plaintiff, since plaintiff and defendant became partners as aforesaid, has drawn from said business the sum of \$7738.48 which sum has been applied by plaintiff to her own personal use and not otherwise, and none of which has been applied to any purposes connected with said business, nor to any purpose connected with the household or other family expenses of plaintiff and defendant, but is exclusive of all sums drawn from said business by plaintiff for household, family and living expenses. That defend-

ant believes that a large part of said withdrawals aggregating \$7738.48 has been applied to the purchase and maintenance of property purchased by plaintiff in her own name and in which this defendant has no interest.

That on Jan. 1st, 1948, plaintiff and defendant established and opened a retail paint and wallpaper store in Anchorage, Alaska, which became a part of the business of the said partnership, and to which the plaintiff contributed her services in the management and operation thereof from said date until January 1st, 1951, on which date for reasons best known to plaintiff and not known to defendant, the plaintiff ceased to take any part in the management of said retail business, declared that she was through with the same, and since said time plaintiff has rendered no services to said partnership but has abandoned all connection therewith.

III.

Answering paragraph V of said complaint defendant admits that an incompatibility of temperament exists and has for a long time existed between plaintiff and defendant which has resulted in a situation such that the parties cannot longer live together amicably as husband and wife; that they have not cohabited together as husband and wife for a long time, and that a reconciliation is impossible, but defendant denies that said incompatibility is the result of any fault of defendant, denies that he has been critical and fault-finding toward plaintiff, and alleges on the contrary that such incompatibility is

the result of a loss of affection for defendant by plaintiff; that for the past two years or more the plaintiff has been cold and distant toward defendant, and in that behalf defendant alleges that he has at all times endeavored to maintain the amicable and affectionate relations which plaintiff and defendant enjoyed during the early part of their married life, that he has indulged plaintiff in her every whim, and has sought by every means in his power to prevent the estrangement which has taken place between the parties hereto, but plaintiff has repelled all his efforts and advances in that regard. Defendant denies that plaintiff "has at all times since said marriage endeavored to resolve the differences between the parties and is without fault in the matter" as alleged in her complaint, and in that behalf alleges that he is without fault in the premises, and that the plaintiff's attitude and conduct toward defendant as above stated is the result of unreal and fancied grievances which have no foundation in fact.

IV.

Answering paragraph VI of plaintiff's complaint defendant denies that the property belonging to the parties hereto has been accumulated through their joint efforts, except as stated in paragraph II of this answer; denies that plaintiff is entitled to the sum of \$100.00 per week for her living expenses from the business belonging to the parties hereto, and denies that said sum has been agreed upon by the parties hereto and in that behalf defendant alleges that for a long time prior to Jan. 1st, 1951,

defendant had permitted plaintiff to draw from the partnership funds the sum of One Hundred Dollars per week for household expenses; that after plaintiff abandoned said partnership on Jan. 1st, 1951, plaintiff continued to receive one hundred dollars per week from said funds for her own living and personal expenses, but without any arrangement or agreement with regard thereto, and that she is still on the date hereof receiving said allowance.

And for a Further and Affirmative Defense and Cross-Complaint Defendant Alleges as Follows:

I.

That defendant is now and for more than two years immediately prior to the commencement of this action has been, a bona fide resident of the Territory of Alaska.

II.

That plaintiff and defendant were married on the 28th day of December, 1928, and ever since have been and now are wife and husband.

III.

That no children have been born the issue of said marriage.

IV.

That during the married life of plaintiff and defendant they have acquired property interests, including a residence at 1547 H Street, Anchorage, Alaska, and since January 1st, 1947, the plaintiff

has been a partner in business with the defendant and continued as such partner up to Jan. 1st, 1951. That during the married life of the parties hereto the plaintiff contributed to some extent by the investment of monies and rendition of services to the acquisition of a part of the properties of plaintiff and defendant, and their operation and maintenance, as is more fully set forth in paragraph II of defendant's answer to plaintiff's complaint, which is herein by reference made a part of this paragraph. That since Jan. 1st, 1951, the plaintiff has contributed nothing, by services or otherwise, to the operation and maintenance of the business properties of the parties, but has on the contrary, purposely and maliciously interfered with the proper conduct of the said business affairs, by the withdrawal of business mail and withholding and secretion of the same, and otherwise, to the great detriment and damage of said business.

V.

That an incompatibility of temperament exists between plaintiff and defendant, and has for a long time existed, of such a nature and to such an extent, as to render it impossible for them to continue the marriage relation with any reasonable degree of happiness. That said incompatibility is largely the result of a loss of affection by plaintiff for defendant, and of unreal, fancied and imaginary grievances which plaintiff has permitted herself to harbor and entertain toward defendant, and which have no foundation in fact. That the defendant is without

substantial fault in the premises and on the contrary has striven by every means in his power to prevent the estrangement which has taken place between the parties, has indulged and humored the plaintiff in all respects, has at all times sought a reconciliation and resumption of amicable and affectionate family relations, but his efforts in that regard have been constantly repelled by plaintiff.

And for a Second Cause of Action on His Cross-Complaint, Defendant Alleges as Follows:

I.

Defendant realleges, reaffirms and adopts as a part of this cause of action, all the allegations set forth in paragraphs I, II and III of the First Cause of Action on this cross-complaint.

II.

Defendant realleges, reaffirms and adopts as a part of this cause of action, all the affirmative allegations set forth in his answer to plaintiff's complaint.

II.

That during the last two years or more of the married life of plaintiff and defendant, the plaintiff has inflicted upon defendant a course of cruel and inhuman treatment calculated to impair his health and at the same time constituting personal indignities rendering his life burdensome, as follows:

That plaintiff has made numerous and frequent

false charges of infidelity on the part of defendant, without the slightest foundation in fact.

That plaintiff has made numerous, frequent and false charges of violence and threats of violence on the part of defendant.

That defendant has been falsely accused by plaintiff on numerous occasions of squandering the assets of the business partnership formerly operated and conducted by plaintiff and defendant.

That plaintiff by false charges has caused defendant to be enjoined in this court from occupying the home of plaintiff and defendant.

That plaintiff has made false charges of drunkenness against defendant.

That plaintiff and defendant have been business partners, as hereinbefore in this answer stated, from Jan. 1st, 1947, to Jan. 1st, 1951.

That on said last-mentioned date plaintiff has ceased to participate in said business or the conduct thereof in any respect whatever, except that plaintiff has withdrawn from the post office mail addressed to said business partnership, has withheld and secreted the same for several weeks, that said mail included several checks payable to said partnership in payment of bills due said partnership, and said withholding of said mail has caused numerous persons to be rebilled on said accounts to their annoyance and dissatisfaction, and to the great annoyance and inconvenience of defendant.

That the acts of cruelty and personal indignities above set forth have caused defendant—has caused defendant constant worry, distress and humiliation

and has to a considerable extent impaired his health, and has caused him to seek medical advice and treatment.

III.

That as heretofore in this answer stated and admitted, during the married life of plaintiff and defendant the parties have acquired a residence and established a retail store, and the plaintiff has to some extent, by her services as a housewife during a considerable part of the married life of plaintiff and defendant, and by her services in the management of said retail store, contributed to the maintenance, operation and increase of the business assets of plaintiff and defendant. That on the other hand, the plaintiff has by her conduct toward plaintiff as hereinbefore alleged has hindered and obstructed the maintenance and expansion of said business. That the defendant concedes and desires that an equitable and just adjustment of the financial status of the parties should be made in any decree that may be rendered herein.

IV.

That the plaintiff is and has been for some months in the employ of her attorneys in this suit, and is earning and will continue to earn in the future a salary of at least \$400.00 per month, and probably in excess of said sum, has considerable means and property of her own, all of which should be taken into consideration in an equitable adjustment of the business affairs and properties of plaintiff and defendant.

Wherefore defendant prays for judgment that he be awarded a decree of divorce from plaintiff; that said decree should provide for an equitable and final adjustment of the business affairs and properties of plaintiff and defendant, including such equitable division of properties owned by plaintiff and defendant as may be made without disrupting and damaging the business heretofore conducted by plaintiff and defendant up to Jan. 1st, 1951, and thereafter by the defendant, and for such other and further relief as to the court may seem equitable in the premises.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed September 27, 1951.

[Title of District Court and Cause.)

ANSWER TO CROSS-COMPLAINT

Comes now the plaintiff above named and answering the cross-complaint of defendant on file herein, admits, denies and alleges as follows:

I.

Plaintiff denies generally and specifically each and every allegation contained in defendant's cross-complaint contrary to the facts as alleged in plaintiff's complaint on file herein.

Wherefore, having fully answered defendant's

cross-complaint, plaintiff prays that defendant take nothing by said cross-complaint and that plaintiff have judgment as prayed for in her complaint on file herein.

DAVIS & RENFREW,
Attorneys for Plaintiff;

By /s/ EDWARD V. DAVIS.

Duly verified.

[Endorsed]: Filed October 2, 1951.

[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT ON MOTION
OF PLAINTIFF TO SET CASE FOR
TRIAL

United States of America,
Territory of Alaska—ss.

M. F. Goggans being first duly sworn on oath deposes and says: that he has read the affidavit of the plaintiff, dated October 2nd, 1951, and filed in support of her motion to set the above-entitled cause for trial at the earliest possible date.

That said affidavit is absolutely untrue in the following particulars.

That said plaintiff has not been denied access to the records and files of the business of M. F. Goggans Co., either prior to or since the commencement of this action.

That it is untrue that since the inception of this

action plaintiff has had only fragmentary reports as to the financial status of the business above mentioned. That the plaintiff or her attorney has been furnished with copies of the financial statements of said business complete for the years 1947, 1948, 1949 and 1950, and her attorney has spent hours in the office of said defendant with the accountant and bookkeeper of defendant, and has had free and complete access to every record and account pertaining to said business, and her said attorney has been assisted in every way possible in obtaining all information possibly available as to the financial status of said business for said years and for the year 1951 to the date of said inspection by said attorney for plaintiff. That defendant has at all times been solicitous that plaintiff and her attorney be afforded the fullest opportunity to examine the books and records of said business because of the numerous and frequent assertions by plaintiff that the defendant has been in the past and continues to dissipate the funds of said business, and because defendant desires to put an end to said false accusations.

That the statement in said affidavit that defendant "has, in violation of the stipulation on file herein, expended funds belonging to the businesses above mentioned for his own personal use, all to the detriment of plaintiff," is untrue and without any foundation in fact.

That the statement of plaintiff in said affidavit that the defendant has since the service on him of the restraining order herein and up to and including

the 28th day of August, 1951, dissipated funds of the said business to the amount of \$747.78 or more is likewise untrue and without any foundation in fact. That the defendant has not expended any sum whatsoever in violation of the court's restraining order nor except for legitimate business purposes.

That defendant is perfectly willing that the trial of this case be set at the earliest possible date, consistent with reasonable notice to defendant and his attorney.

/s/ M. F. GOGGANS.

Subscribed and sworn to before me this 9th day of October, 1951.

[Seal] /s/ GEORGE B. GRIGSBY,
Notary Public for Alaska.

My Commission expires May 20, 1955.

[Endorsed]: Filed August 9, 1951.

DISSOLUTION OF PARTNERSHIP

This Agreement, made and entered into this 2nd day of November, 1951, by and between Marlin Ferris Goggans, sometimes known as M. F. Goggans, and as Mike Goggans, of Anchorage, Third Judicial Division, Territory of Alaska, the party of the first part, and Reta Osborn Goggans, sometimes known as Reta O. Goggans and as Reta Osborn, of Anchorage, Third Judicial Division, Territory of Alaska, the party of the second part, Witnesseth:

Whereas, the parties to this agreement, since the 1st day of January, 1947, have been associated as

co-partners in a certain business conducted at Anchorage, Alaska, and known as the M. F. Goggans Co., and

Whereas, such business for the year 1947 consisted of a certain painting contracting business and since 1947 has consisted of a painting contracting business and a wholesale and retail paint business, and

Whereas, the parties to this agreement, in addition to being partners, have been and now are husband and wife, respectively, and

Whereas, the second party, on or about the 7th day of August, 1951, commenced an action in the District Court for the Territory of Alaska, Third Division, which sought to dissolve the marriage relationship between the parties and to determine the property rights of the parties, and

Whereas, the parties have mutually agreed upon a settlement of their property rights and upon a dissolution of the partnership, by the terms of which the second party is to transfer to the first party all the right, title and interest of the second party in and to the partnership business and the property belonging thereto, and whereby the first party is to make certain payments to the second party, all as hereinafter more fully set forth.

Now Therefore, in consideration of the premises and in consideration of the respective promises of the parties and of the property to be transferred by the second party and of the money to be paid by the first party, the parties hereto do hereby covenant and agree as follows:

The second party concurrently with the execution

of this agreement has executed and delivered to first party a Bill of Sale conveying to the first party all the right, title and interest of the second party in and to the business known as F. M. Goggans Co. and all the property belonging thereto, including furniture, fixtures, equipment, merchandise inventory, supplies, cash on hand and on deposit. The second party has retained to herself household furnishings and fixtures, a 1947 Pontiac automobile bearing 1951 Alaska license 5919, and the family home heretofore carried on the books of the partnership as a portion of the partnership assets.

The parties agree that the partnership relationship heretofore existing between them and above described and known as M. F. Goggans Co. shall be dissolved as of the close of business of Nov. 1st, 1951, and in that connection second party waives any claim she would otherwise have to profits from the operation of the partnership business for the year 1951 as well as for prior years except as to payments to be made to the second party by the first party as hereinafter more fully set out.

First party agrees that he will assume and pay all debts, bills, obligations and liabilities of the partnership above described and of all business enterprises heretofore operated by the parties from the inception of the partnership forward, and that he will save and hold the second party harmless as against any loss or liability in connection with such bills, obligations, debts or liabilities without exception.

First party agrees that he will assume and pay any and all debts, liabilities or obligations that there

may be by reason of taxes, municipal, Territorial or Federal, arising out of income earned or alleged to have been earned by the parties to this agreement in connection with the partnership business above described and from the business operated by them including personal liability for taxes of both partners by reason of money earned or alleged to be earned by the operation of the partnership business as above set forth up to and until the 1st day of January, 1951, and the first party expressly agrees that if any additional assessment of taxes is made by any governmental authority by reason of the operation of the partnership or the conduct of its business up to and until said date, that he will assume and pay such taxes and save the second party harmless therefrom.

It is agreed by the parties that the family home located at 1547 H Street, Anchorage, Alaska, and more particularly described as Lot 10, Block 42-B, South Addition, is presently encumbered by two mortgages, namely, a first mortgage in favor of the First National Bank of Anchorage, Alaska, in an amount of approximately \$1500.00, and a second mortgage of \$13,000.00 in favor of W. P. Fuller & Co., and that the Pontiac automobile above mentioned is likewise encumbered, along with other personal property of the business, by a chattel mortgage in favor of W. P. Fuller & Co.

The first party agrees that concurrently with the execution of this agreement he will execute and deliver to the second party a deed conveying to the second party all the right, title and interest of the first party in and to the real estate known as 1547

H Street hereinabove described, together with the furniture and fixtures therein contained, subject to the mortgage in favor of W. P. Fuller & Co. above described.

It is agreed by the parties that W. P. Fuller & Co. has agreed in writing to a partial release of the chattel mortgage now held by it insofar as such mortgage encumbers the 1947 Pontiac sedan automobile above described upon execution and delivery to W. P. Fuller & Co. of a chattel mortgage covering a certain 1951 Chevrolet automobile now owned by the first party. The first party agrees that concurrently with the execution of this agreement he will execute and deliver to W. P. Fuller & Co. a chattel mortgage covering the 1951 Chevrolet automobile above mentioned in order that the 1947 Pontiac sedan automobile may be released from the presently-existing chattel mortgage. The first party further agrees that concurrently with the execution of this agreement he will pay to the First National Bank of Anchorage, the balance of the first mortgage and that he will cause satisfaction of such mortgage to be recorded in the records of the Anchorage Recording Precinct, in order that the mortgage to W. P. Fuller & Co. will stand as a first and prior mortgage against the real property.

It is agreed by the parties that the first party has acquired an interest in certain real and personal property at Bruin Bay on the west shore of Cook Inlet in the Third Division. The second party acknowledges that she neither has nor claims any interest in such property and concurrently with the

execution of this agreement the second party agrees that she will execute and deliver to first party a quit-claim deed conveying to the first party all the right, title and interest which the second party might have or claim in and to such property.

It is agreed by the parties that the second party has acquired certain personal property located near Lake Spenard in the Anchorage Precinct, Third Division. The first party acknowledges that he neither has nor claims any interest in such property and concurrently with the execution of this agreement, the first party agrees that he will execute and deliver to the second party a bill of sale conveying to the second party all the right, title and interest which the first party might have or claim in and to such property.

The first party agrees that on or before the 10th day of November, 1951, first party will pay to the second party the sum of five hundred dollars (\$500.00), and that a like sum of five hundred dollars (\$500.00) will be paid by the first party to the second party on or before the 10th day of each month thereafter until such payments have been made for a period of four years and four months, or until February, 1956. From the sum of \$500.00 per month above mentioned, the second party agrees that she will pay the sum of \$250.00 per month commencing with the 15th day of November, 1951, toward the satisfaction of the W. P. Fuller & Co. mortgage against the family home hereinabove described. Provided that, at his option, the first party may pay to second party the sum of \$250.00 monthly

as aforesaid, and deliver to said second party monthly as aforesaid, the first party's certified check for the sum of \$250.00 payable to the order of W. P. Fuller & Co.

The first party agrees that as soon as the same may be done after the execution of this agreement that he will secure from W. P. Fuller & Co. a release of any claim of such company against the second party arising by reason of the partnership relation of the parties hereto and by reason of any purchases made by the partnership business from W. P. Fuller & Co., without exception, other than the \$13,000.00 mortgage which is to be paid as hereinabove set forth.

The first party agrees to assume and pay the bill of W. O. Holt & Son for excavation and installation of city water to the family home above mentioned, such bill amounting to the sum of \$272.50, together with a mortgage given by the second party to the City of Anchorage as assessment for city water amounting to \$161.91, the latter bill being payable in three installments, the first installment being due approximately December 1, 1951. It is agreed that the bill of W. O. Holt & Son above mentioned is past due and first party agrees to pay the same concurrently with the execution of this agreement. The first party, at his option, shall be entitled to discharge the two obligations herein mentioned by paying the amounts thereof to the second party, in which event the second party shall pay such obligations and save and hold the first party harmless therefrom.

It is agreed that the second party desires to make certain improvements to the property known as 1547 H Street above described and that approximately \$1,500.00 in wholesale cost of glass, paint, wallpaper and other materials will be required in making such improvements. The first party agrees that on or before May 1, 1952, he will pay to the second party the sum of \$1,500.00 or that he will furnish to the second party an equivalent amount at wholesale cost in glass, paint, wallpaper or other materials for the purpose of making such improvements.

It is specifically agreed that the first party shall have the right to make the payments provided by this agreement at a sooner time than is hereinabove set out if he is able to do so.

It is agreed by the parties that the second party has incurred attorneys' fees in the amount of \$750.00 in connection with the Court action above mentioned and that in addition to the attorneys' fees the second party has incurred certain Court costs and expenses amounting to the sum of \$182.65 including the cost of taking deposition and the parties hereto agree that such attorneys' fees and costs are to be borne equally by the parties and concurrently with the execution of this agreement the first party agrees to pay to the second party the sum of \$466.32, being his one-half share of such costs and attorneys' fees.

The first party is to pay his costs and attorney's fees in connection with such action from his own funds, without liability therefor against the second party.

Except as herein provided, each of the parties to

this agreement hereby releases the other party from any claim or obligation against such other party arising out of the business heretofore conducted by the parties or out of the marriage relationship heretofore and now existing between the parties.

It is agreed by the parties hereto that a duplicate original of this dissolution agreement may be filed in the case of Goggans vs. Goggans, No. A-7094 in the District Court for the Territory of Alaska, Third Division, and that such dissolution agreement may be considered by the Court in such action as a property settlement between the parties and at the discretion of the Court may be made a part of the final decree of divorce by reference.

This agreement is to inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

In Witness Whereof, the parties to this agreement have hereunto set their hands at Anchorage, Alaska, the day and year in this agreement first written.

/s/ M. F. GOGGANS,
First Party;

/s/ RETA OSBORN GOGGANS,
Second Party.

Executed in the presence of:

/s/ EDWARD V. DAVIS,
/s/ GEORGE B. GRIGSBY.

Approved:

/s/ GEORGE B. GRIGSBY,
Attorney for First Party.

Approved:

DAVIS & RENFREW,
By /s/ EDWARD V. DAVIS,
Attorneys for Second Party.

United States of America,
Territory of Alaska—ss.

This Is to Certify that on this 30th day of November, 1951, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn as such, personally appeared Marlin Ferris Goggans, sometimes known as M. F. Goggans and as Mike Goggans, and Reta Osborn Goggans, sometimes known as Reta O. Goggans and as Reta Osborn, known to me and to me known to be the individuals named in and who executed the foregoing instrument and they, each for himself and herself acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and official seal the day and year first hereinabove written.

[Seal] /s/ GEORGE B. GRIGSBY,
Notary Public for Alaska.

My commission expires May 20, 1955.

[Endorsed]: Filed November 30, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause came on regularly for hearing at Anchorage, Third Judicial Division, Territory of Alaska, on the 29th, 30th and 31st days of October, 1951, and the 1st day of November, 1951, before the Honorable Anthony J. Dimond, District Judge, sitting as a court of equity, and without the aid of a jury. The plaintiff, Reta Osborn Goggans, was personally present in Court, together with Edward V. Davis, one of her attorneys. The defendant, Marlin Ferris Goggans, was likewise personally present in Court together with George B. Grigsby, his attorney.

Thereupon the parties having agreed upon a property settlement satisfactory to both parties and the Court being fully advised in the premises, now finds the facts in this matter to be as follows:

Findings of Fact

I.

That plaintiff and defendant are now, and for more than two years immediately preceding the commencement of this action have been, bona fide residents and inhabitants of the Territory of Alaska, and now reside at Anchorage, Alaska.

II.

That plaintiff and defendant intermarried at Fairbanks, Territory of Alaska, on the 28th day of December, 1946, and ever since have been, and now are, wife and husband, respectively.

III.

That no children have been born the issue of said marriage.

IV.

That the property rights of the parties hereto have been settled by agreement of the parties and that there has been filed in this action a duplicate original of the Partnership Dissolution of the M. F. Gogans Co., which sets forth the agreement of the parties as to their property rights.

V.

That there is an incompatibility of temperament existing between the plaintiff and defendant, in the following particulars, to wit: That the likes and dislikes of the parties are greatly divergent, so that there has been a great deal of arguing and bickering between the plaintiff and defendant about all manner of things; that the plaintiff and defendant have no common interests or desires. That such incompatibility of temperament has existed for some time prior hereto, and as a result thereof plaintiff and defendant separated on or about the 7th day of August, 1951, and have not since lived or cohabited together as wife and husband. That it will never be possible for the plaintiff and defendant to live together amicably as wife and husband and there is no possibility of a reconciliation between them.

VI.

That the plaintiff is entitled to be restored to her maiden name, to wit: Reta Osborn.

And from the foregoing findings of fact, the Court concludes the law in this matter to be as follows:

Conclusions of Law

I.

That the defendant is entitled to a decree of this Court dissolving absolutely the bonds of matrimony heretofore and now existing between plaintiff and defendant.

II.

That the plaintiff is entitled to be restored to her maiden name, to wit: Reta Osborn.

III.

That the property settlement agreement reached by the parties as embodied in the partnership dissolution agreement filed with this Court should be and is hereby approved by the Court and adopted by the Court as a property settlement between the parties to this action and that such settlement agreement as contained in such dissolution of partnership should be by reference made a part of the decree to be entered in this matter, and that both of the parties to this action should be bound by all of the provisions of such agreement to the same extent as though the same were set out in full in such decree.

Let Judgment and Decree be entered accordingly.

Done in Open Court at Anchorage, Third Judicial

Division, Territory of Alaska, this 30th day of November, 1951.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 30, 1951.

In the District Court for the Territory of Alaska,
Third Division

No. A-7094

RETA OSBORN GOGGANS,

Plaintiff,

vs.

MARLIN FERRIS GOGGANS, Also Known as M.
F. GOGGANS,

Defendant.

DECREE

This matter came on regularly for hearing in open Court at Anchorage, Third Judicial Division, Territory of Alaska, on the 29th, 30th and 31st days of October, 1951, and on the 1st day of November, 1951, before the Honorable Anthony J. Dimond, District Judge, sitting as a Court of equity, and without the aid of a jury. The plaintiff Reta Osborn Goggans being personally present in Court, and represented by Edward V. Davis, one of her attorneys, and the defendant Marlin Ferris Goggans was like-

wise personally present in Court together with George B. Grigsby, his attorney.

Thereupon the parties having agreed upon a property settlement satisfactory to both parties and the Court being fully advised in the premises, and Findings of Fact and Conclusions of Law in this matter having been duly filed and entered by the Court;

It Is Hereby Ordered, Adjudged and Decreed that the bonds of matrimony heretofore and now existing between the plaintiff and the defendant are herewith dissolved and made of no further legal effect.

It is Further Ordered, Adjudged and Decreed, and this Court does hereby further order, adjudge and decree that the plaintiff be, and she is hereby, restored to her maiden name, to wit: Reta Osborn.

It is Further Ordered, Adjudged and Decreed that the property settlement agreement reached by the parties to this action as contained in the partnership dissolution executed by the parties and of which a duplicate original has been filed with this Court in this action, is hereby approved and adopted by the Court as a property settlement between the parties and such property settlement agreement as contained in the dissolution of partnership above named by reference is made a part of this decree to the same extent as though set out in full herein and each of the parties to this action are to be considered as being bound by all the terms contained in the dissolution of partnership above mentioned to the same extent as though the agreements contained therein were expressly set forth as a part of this decree.

Done in Open Court at Anchorage, Third Judicial

Division, Territory of Alaska, this 30th day of November, 1951.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed and entered November 30, 1951.

[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT ON
ORDER TO SHOW CAUSE

United States of America,
Territory of Alaska—ss.

Marlin Ferris Goggans, being first duly sworn, deposes and says: That he is the defendant in the above-entitled action; that he has read the affidavit of the plaintiff, Reta Osborn, filed on this motion. That on the 30th day of November, 1951, affiant was granted a divorce from the plaintiff in this action and that the Dissolution of Partnership Agreement referred to in plaintiff's said affidavit was in said Decree approved and adopted as a part thereof.

That affiant has complied with all the terms of said Dissolution of Partnership Agreement except that since August, 1952, affiant has been unable to make the monthly payments of \$500.00 per month as required by said agreement for the reason that since said month of August, 1952, affiant has had no interest in any of the assets of the M. F. Goggans Com-

pany whatever, has had no income therefrom and has been absolutely without available funds for the payment of said monthly installments of \$500.00. That by the terms of a certain contract theretofore entered into between affiant and W. P. Fuller & Company, affiant was in the month of August, 1952, compelled to surrender all his interest in the assets of the M. F. Goggan Company and the possession thereof to the W. P. Fuller & Company, and ever since said date the said W. P. Fuller & Company have had entire control and possession of said assets and all interests pertaining thereto. That affiant has no knowledge or information as to whether or not the holder of the mortgage on the real property set aside to the plaintiff by said Dissolution of Partnership Agreement has threatened foreclosure proceedings or not.

That affiant is absolutely without funds or financial resources at the present time and has no personal or real property from which to obtain funds and has not, since the month of August, 1952, had any assets, real or personal, from which funds could be derived sufficient in amount to make any substantial payment upon the said monthly obligation to plaintiff of \$500.00. That affiant has not to exceed \$50.00 in cash at the present time. He is not earning any money and has not earned any money since August, 1952.

/s/ M. F. GOGGANS.

Subscribed and sworn to before me this 4th day of April, 1953.

[Seal] /s/ GEORGE B. GRIGSBY,
 Notary Public for Alaska.

My commission expires May 20, 1955.

[Endorsed]: Filed April 6, 1953.

[Title of District Court and Cause.]

REPLY AFFIDAVIT OF PLAINTIFF

United States of America,
Territory of Alaska—ss.

Reta Osborn, being first duly sworn, upon her oath, deposes and says:

That she is the plaintiff in the above-entitled action; that your affiant has read the affidavit of defendant on order to show cause; that your affiant is informed and believes that the defendant has made at least two trips to the continental United States since he has ceased making payments to your affiant; that the defendant now resides in a large dwelling located at 445 East Fifth Avenue, Anchorage, Alaska, which dwelling your affiant is informed would require substantial rentals, but the circumstances of rental or hire of said dwelling are unknown to your affiant; that the defendant has access to and uses, through ownership or through some means not known to your affiant, a 1952 Buick automobile.

That the defendant has at least once since ordered by the Court to make payments to your affiant, mar-

ried and taken on additional obligations of support and accordingly your affiant is lead to believe that the defendant has assets from some source which he has failed and refused to apply toward the obligation due and owing to your affiant by order of the Court hereinabove referred to.

/s/ RETA OSBORN.

Subscribed and sworn to before me this 7th day of April, 1953.

[Seal] /s/ JOHN C. HUGHES,
Notary Public for Alaska.

My commission expires April 9, 1955.

[Endorsed]: Filed April 7, 1953.

[Title of District Court and Cause.]

TRANSCRIPT OF OPINION

On Friday, November 5, 1954, in open court at Anchorage, Alaska, the Honorable J. L. McCarrey, Jr., U. S. District Judge, rendered the following opinion:

The Court: In the case of Goggins vs. Goggins, the case was heard early this week, it comes before the Court upon an Order to Show Cause why the Defendant, Marlin Ferris Goggins, should not be held in contempt of court because of his failure to comply with the decree. Now, counsel for the Defendant argued that this was not a proper proceed-

ing and admitted that he should have raised this question at an earlier date. Since it does not concern itself with alimony, but concerns itself only with the decree wherein is set forth the terms and conditions of the property settlement, I agree with counsel for the Defendant that this is not a proper proceedings and that contempt will not lie at this time. However, I feel that the Defendant has not proved that he is at this time not in position to meet the requests of the property settlement reduced and qualified as stated by Mr. Davis for the Plaintiff and is at this time hereby ordered to pay the sum of \$1500.00, plus interest upon the mortgage in conformance with the letter directing that payment by the mortgaged company which is contained in the Affidavit in the case, and, counsel for the Plaintiff may prepare an Order in conformance with the ruling of the Court.

Duly verified.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

ORDER

This matter having come on regularly for hearing on the 3rd day of November, 1954, on motion of the plaintiff and upon order of the Court heretofore made requiring the defendant to show cause on such date as to why he should not be dealt with for con-

tempt of Court, and the Court having heard argument of respective counsel and having considered the matter raised by counsel for the defendant that contempt proceedings will not lie in this matter and the Court being fully advised in the premises,

Now Therefore, It Is Hereby Ordered and Adjudged as follows:

1. That the defendant Marlin Ferris Goggans is not subject to contempt proceedings at this time.

2. That Marlin Ferris Goggans is hereby ordered to pay forthwith to the plaintiff Reta Osborn, formerly Reta O. Goggans, the sum of \$1500.00 plus interest on \$9000.00 from January 1, 1954, at the rate of 6% per annum, as provided by the terms and conditions of a certain mortgage and in conformance with a letter from W. P. Fuller & Co., the mortgagee, directing such payment.

3. It is further ordered that the defendant Marlin Ferris Goggans shall pay to the plaintiff, on or before the 1st day of each month commencing with the 1st day of January, 1955, interest accrued on the mortgage above described to such time.

Done in Open Court at Anchorage, Third Judicial Division, Territory of Alaska, this 12th day of November, 1954.

/s/ JOHN L. McCARRY, JR.,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed and entered November 12, 1954.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION
FOR ORDER TO SHOW CAUSE

United States of America,
Territory of Alaska—ss.

Reta Osborn, being first duly sworn, upon her oath, deposes and says:

That she is the plaintiff in the above-entitled action; that as will appear from the records and files of this action, this Court by its decree on the 30th day of November, 1951, approved and adopted as a part thereof, a settlement agreement between the parties and including the agreement of the defendant to pay certain monies to the plaintiff as therein more fully appears.

That under date of September 26, 1953, this Court ordered the defendant to make a payment of \$1,500.00 to the plaintiff to apply on the monies due by the decree above mentioned and that such sum was paid; that nothing has been paid on account of the monies due by such decree since such time.

That this Court on the 12th day of November, 1954, supplemented its previous orders in this matter and required the defendant to pay forthwith to the plaintiff the sum of \$1,500.00 plus interest at the rate of 6% per annum on \$9,000.00 from the 1st day of January, 1954, and such order further required the defendant to pay, monthly, accrued interest, all as will more fully appear from such order.

That the defendant has failed and refused to pay such money or any part thereof.

That as will more fully appear from the records and files of this action, part of the money to be paid by the defendant in this matter is represented by a mortgage upon the family home, which home was conveyed to the plaintiff and which mortgage was to be paid by the defendant. That plaintiff has received numerous letters threatening to foreclose such mortgage unless payment is made and the last of such letters fixed a deadline of February 1, 1955, for such payment and affiant is expecting mortgage foreclosure proceedings to be instituted shortly.

That the defendant is regularly employed at a salary by his own figures, in excess of \$6,000.00 per year. That as affiant is informed and believes and so alleges the fact to be defendant is well able to make the payments ordered by the Court and has refused to make such payments and has frankly stated that he does not intend to make such payments, and that as affiant believes defendant is in contempt of this Court.

This affidavit is made in support of affiant's motion for an order for the defendant to show cause as to why he should not be dealt with for his contempt of this Court.

/s/ RETA OSBORN.

Subscribed and sworn to before me this 23rd day of February, 1955.

[Seal] /s/ MILDRED M. HANSEN,
Notary Public for Alaska.

My commission expires: 12/19/58.

[Endorsed]: Filed February 23, 1955.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the motion of the plaintiff in the above-entitled action and on the affidavit of said plaintiff on file herein, and good cause appearing therefrom,

It is Hereby Ordered, Adjudged and Decreed that the defendant M. F. Goggans shall appear and show cause before this Court on the Fourth day of March, 1955, at the hour of 4:00 o'clock p.m. of said day, at the courtroom of this Court in Anchorage, Alaska, as to why he should not be adjudged guilty of contempt of this Court for his failure to comply with the orders of this Court entered in the above-entitled matter, including the order and decree of November 30, 1951, and subsequent orders, including the order of November 12, 1954.

It is Further Ordered that a certified copy of this order shall be served upon the defendant not later than 3 days before the hearing date upon the order to show cause hereinabove set forth.

Dated at Anchorage, Alaska, this 23rd day of February, 1955.

/s/ JOHN L. McCARREY, JR.,
District Judge.

[Endorsed]: Filed and entered February 23, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT ON
ORDER TO SHOW CAUSE

United States of America,
Territory of Alaska—ss.

M. F. Goggans, being first duly sworn, deposes and says:

That he is the Defendant in the above-entitled action.

That on the 23rd day of December, 1954, he filed a petition for an Adjudication in Bankruptcy in the above-entitled Court and on that same day was adjudicated a bankrupt by said Court.

That the debt of the Defendant owing to Plaintiff was listed by Defendant in the schedule of debts and liabilities, in said bankruptcy proceedings.

That the Affiant has no funds or assets whatsoever from which to pay the debt or any part thereof, to which this contempt proceeding pertains.

/s/ M. F. GOGGANS.

Subscribed and sworn to before me this 8th day of March, 1955.

[Seal] /s/ GEORGE B. GRIGSBY,
Notary Public for Alaska.

My commission expires May 20, 1955.

[Endorsed]: Filed March 8, 1955.

[Title of District Court and Cause.]

MEMORANDUM OPINION

By the terms of the decree entered November 30, 1951, the defendant was required to pay the plaintiff \$26,000 at the rate of \$500 a month. He is now in arrears in an amount approximating \$12,000.

On November 12, 1954, this court, by Judge McCarrey, ordered the defendant to pay to the plaintiff \$1,500 and interest on \$9,000, the amount then due her. There has been no compliance with this order. On February 23, 1955, the defendant was ordered to show cause why he should not be committed for contempt. He responded by affidavit averring that on December 23, 1954, he was adjudicated a bankrupt and that he has no funds or assets, and by making a collateral attack on the order of November 12, 1954. The hearing on the latest order was before me. At its conclusion I expressed the opinion, which I now reiterate, that I cannot redetermine the facts on which the order of November 12, 1954, is based. Precedent, tradition, and comity forbid that another judge of the same court should make an independent redetermination of questions previously determined. I am remitted, therefore, to the bare averments of the affidavit referred to, which I find insufficient to constitute a showing of good cause.

I conclude, therefore, that the failure of the defendant to obey the order referred to constitutes contempt and that he should be committed to the custody of the United States Marshal until he com-

plies with said order. Accordingly, an order in conformity herewith may be presented, with the further provisions that the defendant may have three days, computed according to Rule 6(a) of the Federal Rules of Civil Procedure, in which to pay the amount ordered to the plaintiff or to the clerk of this court, and that in default thereof he shall forthwith surrender himself to the United States Marshal in execution of the order entered, pursuant to this opinion.

Dated at Anchorage, Alaska, this 14th day of March, 1955.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed March 14, 1955.

In the District Court for the District of Alaska,
Third Division

No. A-7094

RETA OSBORN,

Plaintiff,

vs.

MARLIN FERRIS GOGGANS, Also Known as
M. F. GOGGANS,

Defendant.

ORDER

The above-entitled matter having come on regularly for hearing on the 10th day of March, 1955;

the plaintiff was personally present with Edward V. Davis of her attorneys and the defendant was personally present with George B. Grigsby, his attorney. Argument was had to the Court on behalf of the respective parties and the Court having taken the matter under advisement and having on the 14th day of March, 1955, entered memorandum opinion in the matter and being fully advised in the premises,

Now Therefore it is hereby ordered and adjudged as follows:

1. The showing made by the defendant in this matter is insufficient to constitute a showing of good cause and the failure of the defendant to obey the previous order of this Court constitutes contempt of this Court and the defendant should be committed to the custody of the United States Marshal until he complies with the order of this Court made on November 12, 1954.

2. The defendant may have a period of three (3) days computed according to Rule 6(a) of the Federal Rules of Civil Procedure to pay the sum of \$1,500.00 together with interest on the sum of \$9,000.00 at the rate of 6% per annum from the 1st day of January, 1954, either to the Clerk of this Court for the benefit of the plaintiff or to the attorneys for the plaintiff.

3. Defendant is further ordered hereafter to pay such interest as is provided in the order dated November 12, 1954.

4. In the event the defendant M. F. Goggans does

not make the payments as hereinabove provided within a period of three days computed according to Rule 6(a) of the Federal Rules of Civil Procedure he shall forthwith and without further proceedings of this court surrender himself to the United States Marshal for the District of Alaska, Third Division, in execution of this order.

Done in Open Court at Anchorage, Third Judicial Division, Territory of Alaska, this 15th day of March, 1955.

/s/ GEORGE W. FOLTA,
District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed and entered March 15, 1955.

[Title of District Court and Cause.]

OBJECTION TO ORDER AND JUDGMENT

Defendant objects to the Order and Judgment rendered herein on the 15th day of March, 1955, wherein and whereby he was adjudged guilty of Contempt of the above-entitled Court, on the ground that this court was without jurisdiction to render said Order and Judgment.

Dated March 15, 1955.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

[Endorsed]: Filed March 15, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Marlin Ferris Goggans, also known as M. F. Goggans, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order entered in this action on the 15th day of March, 1955, which said order from which this appeal is taken was as follows:

Order

The above-entitled matter having come on regularly for hearing on the 10th day of March, 1955; the plaintiff was personally present with Edward V. Davis of her attorneys and the defendant was personally present with George B. Grigsby, his attorney. Argument was had to the Court on behalf of the respective parties and the Court having taken the matter under advisement and having on the 14th day of March, 1955, entered memorandum opinion in the matter and being fully advised in the premises.

Now Therefore it is hereby ordered and adjudged as follows:

1. The showing made by the defendant in this matter is insufficient to constitute a showing of good cause and the failure of the defendant to obey the previous order of this Court constitutes contempt of this Court and the defendant should be committed to the custody of the United States Marshal until

he complies with the order of this Court made on November 12, 1954.

2. The defendant may have a period of three (3) days computed according to Rule 6(a) of the Federal Rules of Civil Procedure to pay the sum of \$1,500.00 together with interest on the sum of \$9,000.00 at the rate of 6% per annum from the 1st day of January, 1954, either to the Clerk of this Court for the benefit of the plaintiff or to the attorneys for the plaintiff.

3. Defendant is further ordered hereafter to pay such interest as is provided in the order dated November 12, 1943.

4. In the event the defendant M. F. Goggans does not make the payments as hereinabove provided within a period of three days computed according to Rule 6(a) of the Federal Rules of Civil Procedure he shall forthwith and without further proceedings of this court surrender himself to the United States Marshal for the District of Alaska, Third Division, in execution of this order.

Dated March 16, 1955.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

[Endorsed]: Filed March 16, 1955.

[Title of District Court and Cause.]

SUPERSEDEAS BOND

We the undersigned jointly and severally acknowledge that we and our personal representatives

are jointly bound to pay Reta Osborn, plaintiff, the sum of Three thousand dollars (\$3,000.00).

The condition of this bond is that whereas the defendant has appealed to the Court of Appeals for the Ninth Circuit from an order of this court, entered March 15, 1955, if this defendant shall pay the amount of the final judgment herein if his appeal shall be dismissed or judgment affirmed or modified, together with all costs that may be awarded, then this bond is void, otherwise to be and remain in full force and effect.

/s/ M. F. GOGGANS,
Defendant-Appellant.

/s/ JAMES E. NORENE,
Surety.

c/o GEORGE B. GRIGSBY.

United States of America,
Territory of Alaska—ss.

James E. Norene, being first duly sworn, deposes and says:

That he is a resident within the Territory of Alaska; that he is not a counselor or attorney at law, marshal, clerk of any court or other officer of any court; that he is worth the sum of Three thousand dollars (\$3,000.00), exclusive of property exempt from execution and over and above all his just debts and liabilities.

/s/ JAMES E. NORENE.

Subscribed and Sworn to before me this 17th day of March, 1955.

1. That the Court was without jurisdiction to make the Order of November 12, 1954.

2. That the Court was without jurisdiction to issue the Order to Show Cause of February 23, 1955.

3. That the Court was without jurisdiction to make the Order of March 15, 1955, and erred in adjudging defendant guilty of contempt of court in failing to obey the order of the Court of November 12, 1954.

4. That the Court was without jurisdiction to make the Order of March 15, 1955, whereby the defendant was directed to pay the plaintiff certain sums of money, or in default of said payments, to surrender himself to the United States Marshal for the District of Alaska, Third Division, and erred in including said directions in said order.

5. That resort cannot be had to contempt proceedings to enforce the provisions of the decree of divorce filed herein on November 30, 1951, in so far as said provisions relate to the payments of money referred to in the preceding paragraph of this Statement of Points.

Dated April 14, 1955.

/s/ GEORGE B. GRIGSBY,

Attorney for Defendant and
Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, Wm. A. Hilton, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 10, of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above-entitled action or proceeding, designated by the respective parties.

The papers herewith transmitted constitute the record on appeal from the order filed and entered in the above-entitled cause by the above-entitled Court on March 15, 1955, to the United States Court of Appeals at San Francisco, California.

[Seal] /s/ WM. A. HILTON,
Clerk of the District Court for the Territory of
Alaska, Third Division.

[Endorsed]: No. 14756. United States Court of Appeals for the Ninth Circuit. Marlin Ferris Goggans, also know as M. F. Goggans, Appellant, vs. Reta Osborn, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed May 4, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14756

MARLIN FERRIS GOGGANS, Also Known as M.
F. GOGGANS,

Appellant,

vs.

RETA OSBORN,

Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD FOR PRINTING

The above-named Appellant hereby adopts as his Statement of Points upon which he intends to rely for appeal, and as his Designation of Record for Printing, the Statement of Points and the Designa-

tion and Supplemental Designation as appear in the typewritten transcript of the record on appeal.

/s/ GEORGE B. GRIGSBY,
Attorney for Appellant.

Service of Copy acknowledged.

[Endorsed]: Filed May 11, 1955.